

1     AGREEMENT FOR THE CONSTRUCTION OF A WRAPPER BUILDING ADJACENT TO  
2     THE DURHAM PERFORMING ARTS CENTER  
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5     **THIS AGREEMENT** (the “Agreement”), is dated as of \_\_\_\_\_, 2013 (“Effective  
6     Date”), between the **CITY OF DURHAM**, a North Carolina municipal corporation, (the  
7     “City”), and **Blackwell Street Management Company, LLC** (the “Company”), a limited  
8     liability company organized and existing under the laws of North Carolina, hereinafter  
9     collectively referred to as the “Parties”.

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11    **1.0     BACKGROUND AND PURPOSE**  
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13        1.1     It is the policy of the City to aid and encourage the location of desirable business  
14     enterprises in the City of Durham which will increase the tax property base and add new jobs and  
15     business prospects to the City. The City owns the Durham Performing Arts Center (“DPAC”)  
16     located at 123 Vivian St., Durham, N.C. The Company, either directly or through Affiliates,  
17     owns property adjacent to the west side of the DPAC property and has proposed the construction  
18     of a wrapper building (“Wrapper Building”) to be located contiguous to the DPAC building,  
19     which construction will require the exchange of certain property interests between the City and  
20     the Company;  
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22        1.2     The proposed Wrapper Building will comprise (i) approximately 90,000 square  
23     feet of commercial hotel space, and (ii) approximately 7,500 square feet of retail and commercial  
24     space. In exchange for the private capital investment to be made in the Wrapper Building, the  
25     City has agreed to purchase or to acquire use of space within the Wrapper Building as amenities  
26     to be used by the DPAC (“DPAC Amenities”). The DPAC Amenities include a Restroom  
27     Condominium and a new President’s Club space to be directly accessible from the 2<sup>nd</sup> floor of  
28     the DPAC;  
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30        1.3     In order to facilitate the completion of the project, the Company and City agree to  
31     exchange certain property interests as necessary to allow for the construction of the Wrapper  
32     Building and completion of the DPAC Amenities. This Agreement is made pursuant to the  
33     authority of the City to enter into agreements for urban development projects under the North  
34     Carolina General Statute Section 160A-458.3 and the Durham City Charter, Section 108.1; and,  
35

36        1.4     It is anticipated by the Parties that the Project will encourage the location of  
37     commercial businesses, enterprises and activities in downtown Durham, and will encourage  
38     employment in downtown Durham, all of which will increase taxable property, business  
39     prospects, sales tax revenues and economic conditions in downtown Durham.  
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41    **2.0     DEFINITIONS**  
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43        **2.1     Affiliate or Affiliates.** “Affiliate or Affiliates” Affiliate or Affiliates means any  
44     individual, corporation, limited liability corporation, partnership, joint venture, estate, or trust  
45     (“Person”) who owns any of the Company, who is wholly or partially owned by the Company, or

who wholly or partially owns or is wholly or partially owned by the Persons who own any of the Company.

**2.2 Architect.** “Architect” shall be a professional Architect licensed to practice in North Carolina, whose services shall be engaged by the Company for the Project design and construction administration related work. The term Architect shall be inclusive of all professional subconsultant specialties and disciplines necessary to complete the Project, including, but not limited to, surveying and engineering. The Architect responsible for the design and construction administration of the DPAC Amenities must be satisfactory to the City Manager in his reasonable discretion. Without limiting the choice of other persons or firms to qualify as Architect, the City Manager has determined that Szostak Design Incorporated is satisfactory to serve as Architect.

**2.2 Condominium Purchase Contract.** “Condominium Purchase Contract” means the contract for purchase of the Restroom Condominium, which is attached hereto as Exhibit H.

**2.3 Construction.** “Construction” means the construction activities performed by the Company’s own employees and forces and/or causing the construction to occur by means of entering into agreements with other persons. It includes the initial construction of the Project, and includes the purchasing, acquiring and renting apparatus, supplies, materials and equipment as appropriate for that work.

**2.4 Construction Contract.** “Construction Contract” means the contract between the Company and the Contractor(s) for the Construction of the Project.

**2.5 Construction Documents.** “Construction Documents” mean the architectural/engineering drawings and technical specifications prepared by the Architect and required for the completion of the Construction of the Project, including all revisions and amendments to same, and prepared in compliance with Legal Requirements.

**2.6 Contractor.** “Contractor” shall refer to a general contractor licensed under NC law with the appropriate classification for the work performed, chosen by and under contract with the Company to perform Construction work for the Project. The Parties agree that the Construction work for the Project may be performed by more than one prime Contractor. The Contractor(s) for the DPAC Amenities shall be approved by the City Manager. The approval of the Contractor of the DPAC Amenities by the City Manager shall be based on the proposed Contractor’s (i) status as a licensed general contractor in the State of North Carolina; (ii) experience on commercial construction projects of a similar nature; and (iii) experience on commercial construction/renovation projects approximately the same size as the Project. Without limiting the choice of other persons or firms to qualify as a Contractor, the City Manager has determined that Davidson and Jones Construction Company is satisfactory to serve as the Contractor. Any reference in this Agreement to “a Contractor,” “the Contractor,” or “Contractor(s)” shall be interchangeable to refer to Davidson and Jones Construction Company or other City approved Contractor(s). City approval of Contractor(s) is not intended to apply to subcontractors used by an approved Contractor(s).

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93       **2.7     Declaration of Condominium.** “Declaration of Condominium” means the  
94 declaration of condominium to be filed by the Company after the completion of Construction of  
95 the Wrapper Building in accordance with the North Carolina Condominium Act designating the  
96 Restroom Condominium as a condominium unit of the Wrapper Building.  
97

98       **2.8     DPAC Building.** “DPAC Building” or “DPAC” means the 2,712-seat Durham  
99 Performing Arts Center building and facility located at 123 Vivian Street;  
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101       **2.9     DPAC Amenities.** “DPAC Amenities” refers collectively to the Restroom  
102 Condominium and President’s Club leased space to be used by the DPAC and constructed within  
103 the Wrapper Building.  
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105       **2.10   DPAC Lot.** “DPAC Lot” refers to the real property upon which the DPAC  
106 Building is located comprising approximately 1.465 acres and more particularly identified as Lot  
107 4 on the Project Plat;  
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109       **2.11   East Parking Deck.** “East Parking Deck” means the parking garage located at  
110 250 South Mangum St., and bordering the south side of the DPAC Lot.  
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112       **2.12   Legal Requirements.** “Legal Requirements” means all material laws, statutes,  
113 ordinances, rules, regulations, permits, licenses, and requirements of all governments or  
114 regulatory authorities, that now or hereafter may be applicable to the Project and the operation  
115 thereof, including those relating to employees, zoning, building, health, safety and environmental  
116 matters, and accessibility of public and private facilities. “Legal Requirements” also includes  
117 intellectual rights of third parties including copyright. Use of the term “Legal Requirements” in  
118 this Agreement does not create any obligation of the parties with respect to the operations of the  
119 Private Improvements, in the case of the Company, or the DPAC Amenities, in the case of the  
120 City, after this Agreement terminates pursuant to Section 7.0.  
121

122       **2.13   Minimum Private Investment.** “Minimum Private Investment” means the  
123 minimum amount of Project Costs that the Company shall be required to invest or cause to be  
124 invested in the Private Sector Improvements after the execution date of this Agreement. The  
125 Company shall invest or cause to be invested a minimum of \$10,000,000.00 as the Minimum  
126 Private Investment in the Project.  
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128       **2.14   Mortgagee Approval(s).** “Mortgagee Approval(s)” refer to the required consent  
129 and/or release executed by a mortgagee and/or trustee as referred to in Section 3.3 and prepared  
130 in a form acceptable for recording in the Durham County Registry.  
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132       **2.15   New Dumpster Easement.** “New Dumpster Easement” means the proposed  
133 dumpster and trash easement to be deeded to the City for use by the City in order to  
134 accommodate the operating needs of the DPAC and located in the East Parking Deck and  
135 intended to replace the Original DPAC Dumpster Easement.

**2.16 Original DPAC Dumpster Easement.** “Original DPAC Dumpster Easement” means the “Declaration of Easement for Dumpster Area” established by the City for use by the DPAC and recorded in Deed Book 5487, Pages 183-190 of the Durham County Registry and located on a portion of Lot 5 as shown on plat and survey recorded in Plat Book 176, Pages 73, 76 and 79 Durham County Registry.

**2.17 President’s Club.** “President’s Club” means the new DPAC President’s Club space to be constructed within the Wrapper Building and made directly accessible by DPAC patrons and comprising a minimum of 4,024 rentable square feet located on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the Wrapper Building.

**2.18 President’s Club Lease.** “President’s Club Lease” is the lease agreement between the City and the Company for use of the President’s Club by the DPAC.

**2.19 Private Sector Improvements.** “Private Sector Improvements” means the improvements to be made by the Company from the Minimum Private Investment, which improvements shall include, by way of example but without limitation, construction costs, tenant up-fit, furniture, fixtures and equipment, construction testing services and other similar costs. The Private Sector Improvements shall include the Construction of a hotel with approximately 90,000 square feet, the elevator unit that will connect the hotel to the East Parking Deck and the retail units comprising approximately 7,500 square feet. The Private Sector Improvements will comprise portions of the Wrapper Building.

**2.20 Project.** “Project” means all work required for the completion of the Construction of the Wrapper Building, including the Private Sector Improvements and the DPAC Amenities in accordance with the Construction Documents. The Project includes a total of approximately 102,000 square feet of improvements and will consist of up to six condominium units as follows: one hotel unit, the President’s Club unit, including an elevator and stairs to provide access to the President’s Club, the Restroom Condominium, two retail units, and one unit for an elevator attached to the East Parking Deck. So long as Company meets the Minimum Private Investment expenditure requirements under this Agreement, nothing herein shall limit the Company from electing in its sole discretion to modify the condominium units for the hotel unit, the two retail units, and East Parking Deck elevator unit, including the square footage allocated between the respective units.

**2.21 Project Costs.** “Project Costs” means the following categories of costs incurred by the Company for the Private Sector Improvements (and not the DPAC Amenities): architectural and engineering design services, construction costs paid by the Company to the Contractor as required by the Construction Contract pursuant to pay applications submitted by the Contractor (including schedule of values), and any costs directly incurred by the Company for the procurement of furniture and equipment.

**2.22 Public Investment.** “Public Investment” is the contribution(s) and commitments made by the City to the Company for all services and Construction required to complete the Project. The Pubic Investment includes, without limitation, the purchase of the Restroom Condominium, the execution of the Presidents Club Lease, and Project Property Conveyances from the City to the Company.

**2.23 Project Property Conveyances.** “Project Property Conveyances” means all property interest conveyances necessary for the Construction of the Project or required pursuant to Legal Requirements, including, but not limited to, termination & release of dumpster easement, new dumpster easement, the easement for maintenance of mechanical equipment, the one building agreement, the easement for cross access, the easement(s) for footings, the easement for utilities, deeds for fee parcels, deed(s) for air rights, stormwater cross access and utility easement(s), easement(s) for stormwater drainage, termination of 9 ft. cross access easement (in East Deck), new cross access easement (in East Deck) and the temporary construction easement(s). Reference to all such Project Property Conveyances shall be indicated in the Project Plat.

**2.24 Project Plat.** “Project Plat” means the surveyed plat depicting the real property affected by the Project detailing the areas of Project Property Conveyances over the properties identified as Lots 2, 3, 4, 5 and 6 as originally depicted on plat and survey recorded in Plat Book 176, Pages 73, 76 and 79 Durham County Registry, and shown on plat and survey entitled “\_\_\_\_\_” prepared by Jeffery P. Williams, Professional Land Surveyor, with Coulter/Jewell/Thames, P.A., dated \_\_\_\_\_, 2013 and to be recorded in the Durham County Registry.

**2.25 Restroom Condominium.** “Restroom Condominium” means the women’s restroom facility to be constructed within the Wrapper Building and purchased by the City. The Restroom Condominium will be directly accessible by DPAC patrons from the 2<sup>nd</sup> floor of the DPAC Building. The Restroom Condominium shall comprise approximately 942 square feet.

**2.26 Restroom Condominium Price.** “Restroom Condominium Price” is the purchase price to the City for the Construction of the Restroom Condominium including costs of Construction. The Restroom Condominium Price is Six Hundred, Forty-One Thousand, Three Hundred, Thirty-Eight and No/100 Dollars (\$641,338.00), which price may be modified pursuant to Section 3.1.4.7.

**2.27 Wrapper Building.** “Wrapper Building” means the building to be constructed by the Company on the Wrapper Lot comprising both the Private Sector Improvements and the DPAC Amenities.

**2.28 Wrapper Lot.** “Wrapper Lot” refers to the real property upon which the Wrapper Building is to be located adjacent to the DPAC Lot and comprises approximately 0.877 acres and more particularly identified as Lot 5 on the Project Plat.

### **3.0 COMPANY AND CITY OBLIGATIONS FOR PROJECT CONSTRUCTION**

**3.1 Company Obligations.** The Company shall construct the Wrapper Building, including Private Sector Improvements and the DPAC Amenities on the Wrapper Lot. The Company shall invest or cause to be invested the Minimum Private Investment in the Private Sector Improvements.

**3.1.1 Minimum Private Investment.** The Company shall make or cause to be made the Minimum Private Investment in the Private Sector Improvements consistent with the final Construction Documents for the Wrapper Building. The Company shall submit invoices, copies of the Contractor's applications for payment, receipts, monetary obligations, and other documentation evidencing expenditures in sufficient amounts to allow the City to confirm that the Company has expended the required Minimum Private Investment.

**3.1.2 Timing of Project Construction.** The Company shall commence Construction of the Wrapper Building within three (3) months from the date the Parties have received the Mortgagee Approvals referenced in Section 3.3, and shall complete the Private Sector Improvements and DPAC Amenities within thirty-six (36) months after the date of the commencement of Construction. The Parties shall use good faith efforts at obtaining the appropriate Mortgagee Approvals within a reasonable time of the Effective Date of this Agreement. If however, despite such good faith efforts, the Parties are unable to secure the appropriate Mortgagee Approvals within six (6) months of the Effective Date, this Agreement shall terminate with no further obligations of the Parties.

**3.1.3 Failure to Make Minimum Private Investment.** In the event the Company fails to make the qualified Minimum Private Investment agreed to on or before the above specified date, subject to any unavoidable delays, then the City shall not be obligated to make the Public Investment purchase of the Restroom Condominium or enter into the President's Club Lease.

**3.1.4 Construction of DPAC Amenities.** The Company shall cause the Construction of the DPAC Amenities in accordance with the following requirements:

**3.1.4.1 Design of DPAC Amenities.** The Company shall enter into a contract with the Architect to perform the necessary design and construction administration services for the DPAC Amenities.

**3.1.4.2 City's Right to Approve Design of DPAC Amenities** – the Company shall cause the Architect to prepare the Construction Documents suitable and complete for the Construction of the DPAC Amenities. The City Manager or his designee shall have the right to review the drawings and specifications, at a minimum, at one hundred percent (100%) design development and one hundred percent (100%) construction document stages of design. The Construction Documents shall include detailed technical specifications and drawings, the general description of which is depicted in Exhibit A, "DPAC Amenities Floor Plan," Exhibit B, "Restroom Condominium Specs and Finishing

List,” Exhibit C, “President’s Club Specs and Finishing List,” and Exhibit D, “Fire Alarm System Specifications for Restroom Condominium and President’s Club.” Upon completion of the Construction Documents for the DPAC Amenities, the Company shall send a copy of the completed Construction Documents to the City for final approval. Notwithstanding the approval procedures provided in Section 11.14 below, the City shall have ten (10) working days (i.e., excluding weekend days and City holidays) to approve the Construction Documents. If the City fails to respond with ten (10) working days, the City shall be deemed to have approved the Construction Documents relating to the DPAC Amenities plans and specifications. The Company shall not modify or approve any material modification or material change order to the approved plans and specifications without the City’s written consent, which consent shall not be unreasonably withheld or delayed, except that the City shall have sole discretion to approve any proposed modifications to any finishes or fixtures to be provided in the DPAC Amenities.

3.1.4.3 City Interest in DPAC Amenities Plans and Specifications –The Company shall acquire ownership rights or the right to use DPAC Amenities final Architecture and Engineering drawings and technical specifications which comprise the Construction Documents and other documentation, such as submittals, RFIs, or other construction documentation, and assign such rights to the City that provides to the City the right to use the drawings and technical specifications for additions to and modifications of the Restroom Condominium and the President’s club, provided that the Company or assignee agrees to indemnify the Architect for losses, including reasonable attorney’s fees, suffered by the Architect as a result of the use of the design and the documents for such other purposes. If such drawings and specifications are used by the City or its agents for such other purposes, then neither the Company nor the Architect shall be responsible for their use in connection with such other purposes, and the City agrees to indemnify the Company and the Architect for claims and losses, including reasonable attorneys’ fees, suffered by the Company or the Architect for such other purposes. Architect shall provide hard copy and electronic documentation of Construction Documents in a format requested by the City.

3.1.4.4 DPAC Amenities Construction. After approval of the final Construction Documents of the DPAC Amenities by the City, the Company may commence with construction of the DPAC Amenities (although the Company may commence construction of the site work and the structure of the Wrapper Building without such approval). The Company shall assume all responsibilities for costs and expenses for the Construction of the DPAC Amenities. The Construction of the DPAC Amenities shall be in conformance with the City approved Construction Documents for the DPAC Amenities.

3.1.4.5 Form of the Construction Contract. The Company shall use its best efforts to enter into a Construction Contract with the Contractor for

construction of the DPAC Amenities in accordance with the approved Construction Documents, which, in the Company's sole discretion, may be made a part of a Construction Contract for the Wrapper Building. The Construction Contract between the Company and the Contractor shall name the City as a third-party beneficiary having the same protections, warranties, and other benefits under the Construction Contract as the Company with regard to the Construction of the DPAC Amenities. The City Manager or his designee shall have the right to approve the form of the Construction Contract between the Company and Contractor to ensure the City has the appropriate protections, warranties, and other benefits under the Construction Contract.

3.1.4.6 Project Management Oversight -- The Company shall have a designated project manager responsible for oversight of both the Architect and the Contractor during the Construction of the Project. At the City's expense, the City shall have the right to maintain its field personnel or other designees at the construction site for such Construction to observe the Contractor's construction of the DPAC Amenities, or to attend Company's or Contractor's meetings, if any, on the construction site or alternate locations. No such observation or attendance by personnel or designees of the City shall impose upon the City responsibility for failure by the Company, Architect or the Contractor to observe any laws or safety practices in connection with such construction or excuse Company's obligation to cause the Project to be constructed in accordance with the Project Construction Documents.

.1 Neither the City's public representative(s) nor the designated project manager, if any, will have control over, will be in charge of or will be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, since these are solely Company's and the Contractor's responsibility. Additionally, neither the City's public representative nor project manager has authority to bind the City.

.2 The City may at any time and from time to time, without prior notice to or approval of Company or the Contractor, replace the City's public representative or project manager, if any, with a new City representative. Upon receipt of notice from the City informing Company of such replacement and identifying the new City representative, Company shall recognize such person or firm as City's representative for all purposes under this Agreement.

.3 The City's public representative and project manager, if any, their consultants, and other persons authorized by City will at all times have access to the work wherever it is in preparation or progress. Company shall cause the Contractor to provide proper



360 facilities for such access and for inspection, and any Any such  
361 personnel shall comply with any reasonable rules or requirements  
362 by the Wrapper Contractor for access to the construction site.  
363

364 .4 The City shall have the right to periodically conduct  
365 inspections and tests, at its own expense, on the work performed  
366 by the Contractor using its own project manager, employees or a  
367 third party for the purpose of independently verifying compliance  
368 with the Construction Documents relating to the Construction of  
369 the DPAC Amenities. The City shall provide reasonable notice to  
370 the Company and the Wrapper Contractor if it intends to conduct  
371 inspections or tests. If the Company or Contractor unreasonably  
372 interfere with such inspections or tests after being given prior  
373 notice by the City of such tests or inspections, the Company shall  
374 be responsible for added or extra costs to the City resulting from  
375 such unreasonable interference. If the City's inspections or tests  
376 unreasonably interferes with the Construction, and causes delays or  
377 extra costs to be incurred, the City shall be responsible for the  
378 added or extra costs resulting from such unreasonable interference.  
379

380 .5 The presence of the City's public representative and project  
381 manager, if any, their consultants, and other persons authorized by  
382 the City at the construction site under this Subsection 3.1.4.6 shall  
383 not unreasonably interfere with the performance of the work by the  
384 Company, the Contractor(s) and its subcontractors.  
385

386 3.1.4.7 City Change Order Requests -- Prior to the commencement of, or  
387 during the Construction of the DPAC Amenities, the City may provide the  
388 Company a written request for changes in scope, systems, kinds and quality of  
389 materials, finishes or equipment of the DPAC Amenities. Upon receipt of such a  
390 request, the Company will use its best efforts to cause the Contractor to propose a  
391 change order to perform such work, which change order will be in writing. The  
392 proposed change order shall provide (1) a description of the change in the original  
393 scope of Construction for the affected DPAC Amenity; (2) the amount of the  
394 adjustment, if any, in cost; and (3) schedule implications. The City shall have the  
395 right to decide in its sole discretion to approve or reject the proposed change. If  
396 the City desires to accept the proposed change order, it will provide written notice  
397 accepting the change order within the time specified in the written proposed  
398 change order, which specified time shall not be less than five (5) business days. If  
399 the City fails to provides such notice in a timely manner, the proposed change  
400 order will be deemed rejected.  
401

402 .1 Accounting of City Change Order Requests for Restroom  
403 Condominium – the Company shall maintain an accounting of all  
404 approved and implemented City change order(s) throughout the

Construction of the DPAC Amenities and provide to the City a copy of such accounting upon request. Prior to the City's acquisition of the Restroom Condominium, the Company shall provide the City with a final accounting of all City change order requests that were accepted by the City for the Restroom Condominium.

.2 Accounting of City Change Order Requests for President's Club – the Company shall maintain an accounting of all approved and implemented City change order(s) throughout the Construction of the President's Club. Prior to the City taking possession of the President's Club pursuant to the terms of the President's Club Lease, the Company shall provide the City with a final accounting of all City change order requests that were accepted by the City for the President's Club. Pursuant to the President's Club Lease, City (as tenant) shall be responsible, at its sole cost and expense, to pay for the cost of any approved change order related to a city requested change order to the Construction of the President's Club if the change order increases the cost of the finishes.

.3 Timing of Payment of Change Orders – the cost of any change orders to the Restroom Condominium shall be added to the Restroom Condominium Price. The City shall pay to the Company within ten (10) days of the Commencement Date of the President's Club Lease the amount of all change orders accepted by the City for the President's Club.

**3.2 Conveyance of Project Property Interests.** The Parties acknowledge that the success of the Project requires complex property transactions given the requirements of the Construction Documents and the proximity of the Wrapper Lot to the DPAC Lot and intended use of the DPAC Amenities. Accordingly, the Parties agree to cooperate with each other as necessary to finalize the necessary Project Property Conveyances before commencement of the Construction of the Project. The Parties acknowledge that the Project Property Conveyances will include, but not be limited to, the following:

3.2.1 New Dumpster Easement. The Company shall convey or cause to be conveyed to the City the New Dumpster Easement in the East Parking Deck as shown on the Project Plat. The Company will convey the New Dumpster Easement to the City in a form substantially similar to the attached Exhibit E. In return for conveyance of the New Dumpster Easement to the City, and as part of its Public Investment in the Project, the City agrees to terminate the Original DPAC Dumpster Easement.

3.2.2 Mechanical Equipment Easement. The Company acknowledges that the location of the Wrapper Building adjacent to the DPAC Building affects the City's ability to remove, replace and maintain certain large HVAC equipment that is essential for the DPAC

(“DPAC Mechanical Equipment”). Beginning with the Construction of the Project and after completion, the City will require periodic access to the DPAC Mechanical Equipment for the purposes of inspecting and to maintain, repair, replace or remove the equipment. Such access may require encroachment over the Wrapper Building and Wrapper Lot using large cranes or even a helicopter capable of lifting large pieces of equipment into the air and over the ground. Accordingly, the Company shall convey to the City an Easement for Maintenance of the DPAC Mechanical Equipment to the City in a form substantially similar to the attached Exhibit F.

**3.2.3 One Building Agreement.** Completion of the Project requires the execution of a “one building agreement”, due to (a) certain design elements of the Wrapper Building, (b) its proximity to the DPAC Building, and (c) the City’s desire to locate the DPAC Amenities in the Wrapper Building. The one building agreement will allow the Company to proceed with the Construction of the Wrapper Building in close proximity to the DPAC Building and establish joint facility operational requirements and property owner responsibilities for certain shared structures and walls. The Parties agree to execute and record a One Building Agreement substantially in the form of the attached Exhibit G. The Parties acknowledge that the One Building Agreement must conform to Legal Requirements, including, but not limited to the North Carolina Building Code. The Parties agree to make necessary modifications to the agreement as may be required to comply with Legal Requirements.

**3.2.4 Other Project Property Conveyances.** The Parties acknowledge that numerous other real property interest conveyances are required in order to proceed with the Project. Such conveyances include, but are not limited to the following: fee simple conveyance(s), air rights conveyance(s), easements for cross access, easements for footings, easements for utilities, no build zone declaration(s), and temporary construction easement(s). The Parties agree to negotiate in good faith and to prepare, execute and record all Project Property Conveyances as necessitated by the Project pursuant to the requirements of the Construction Documents and Legal Requirements.

**3.3 Mortgagee Approval of Project Property Conveyances.** The Parties acknowledge that certain Project Property Conveyances shall require the review and approval of the mortgagee(s) having secured interest(s) in the respective properties affected by the Project. The Company acknowledges that the City is not authorized to release or deed any such Project Property Conveyances without first adopting a separate City Council resolution detailing the subject Project Property Conveyances and requesting approval and authorization from its mortgagee and trustee. The Parties acknowledge that the Project cannot proceed until and unless the appropriate consents and releases are executed by the mortgagee(s) and trustee(s) of the affected properties. The Parties agree to use their best efforts in securing such consents and releases to allow the Project to go forward.

**3.4 City as Third-Party Beneficiary.** The Company shall expressly provide that the City is a third-party beneficiary in any contract between the Company and any entity performing design or Construction related work on the DPAC Amenities, including the contract between the Company and the Architect and between the Company and the Contractor.

**3.5 City Obligations.** If the Company successfully completes the Construction of the Wrapper Building, including both the Private Sector Improvements and DPAC Amenities pursuant to the terms of this Agreement, the City agrees to purchase the Restroom Condominium and enter into a long term lease for use of the President's Club Lease.

**3.5.1 Restroom Condominium Purchase Contract.** The Company and the City shall execute the Condominium Purchase Contract for the City's acquisition of the Restroom Condominium, which purchase shall be conditioned on the fulfillment of (a) any preconditions of this Agreement, including the obligations of the Company under Section 3.1, 3.2 and 3.3, (b) prior approval by the City of the Declaration of Condominium and (c) any stated preconditions of the Condominium Purchase Contract, attached hereto as Exhibit H. The City shall pay the Company the Restroom Condominium Price, which shall be subject to adjustment pursuant to Sections 3.1.4.7 above. The Condominium Purchase Contract shall be executed with other closing related documents after required approvals are obtained pursuant to this Agreement. The purchase of the Restroom Condominium shall be subject to the City approval of the Declaration of Condominium. The Declaration of Condominium shall expressly exempt the City, as member of the condominium association, from any association fees or assessments for common area maintenance, repair or construction expenses. The Declaration of Condominium shall expressly state that any stated obligations or liabilities of the City under the Declaration of Condominium shall be subordinate to conflicting local, state or federal laws applicable to local governmental entities, generally, and the City of Durham, specifically. Prior to closing, the Company shall transfer title to the Restroom Condominium to the City, and the Parties shall execute the appropriate closing documents.

**3.5.2 President's Club Lease.** The Company and the City shall execute the President's Club Lease, which lease shall be conditioned on the fulfillment of (a) any preconditions of this Agreement, including the obligations of the Company under Section 3.1, 3.2 and 3.3 and (b) any stated preconditions of the President's Club Lease. The form of President's Club Lease is attached hereto as Exhibit I. The City agrees to pay rent to the Company equal to a base rent of \$9,054.00 per month (for the first year) for a minimum for 4,024 total rentable square feet, which base rent amount shall increase by 3% per year. The lease shall be executed with other closing related documents after required approvals are obtained pursuant to this Agreement. The term of the lease shall commence upon completion of the Project and coincide with the term of the operating lease between the City and the DPAC operator, including renewals.

#### **4.0 PROVISION FOR NONPERFORMANCE**

If after obtaining the Mortgagee Approvals, Company fails to substantially complete or cause to be completed the Wrapper Building, including the DPAC Amenities, in accordance with the scope of work provide in this Agreement and within the time limits established in Section 3.1.2, then within thirty (30) days thereafter the City shall have the right to terminate the Company's services in connection therewith and Company shall reimbursement the City for any fees, costs or expenses incurred by the City in reliance on Company's performance under this Agreement.

**5.0 UNAVOIDABLE DELAYS**

Notwithstanding anything contained herein to the contrary, the Company's performance of its work under this Agreement and any deadlines or other specific dates shall be subject to being extended for the duration of any unavoidable delays. For purposes of this Agreement, "unavoidable delay" or "unavoidable delays" means any delay, obstruction or interference with the work resulting from any act or event provided that such act or event is beyond the reasonable control of the Company and was not separately or concurrently caused by any willful act or omission or negligent act or omission of the Company and could not have been prevented by reasonable actions of the Company, including, but not limited to, delay, obstruction or interference resulting from:

**5.1** An act of God (but not including reasonably anticipated weather conditions for the geographic area), lightning, landslide, sinkhole, earthquake, fire, explosion, flood, sabotage or similar occurrence; acts of a public enemy; acts of terrorism, extortion, or blockade or insurrection, riot or civil disturbance.

**5.2** Restraint of applicable laws;

**5.3** The failure of any utility to provide and maintain utilities services, water and sewer lines, and power transmission lines to the work which are required for the construction or completion of the alterations and renovations or for other obligations of the Company;

**5.4** Any unforeseeable condition at the site of the work which shall prevent, or require a change in, the scope or work, or adversely affect the completion schedule for said work.

**5.5** Strikes, work stoppages or other substantial labor dispute; and

**5.6** Delays caused by the presence of any hazardous waste conditions not previously disclosed by the City to the Company prior to development of the scope of work.

Notwithstanding the above, the sole remedy to the Company for any such unavoidable delay shall be time extensions under this Agreement. There shall be no damages for any unavoidable delay. Failure to request a time extension for an unavoidable delay within thirty (30) calendar days of the completed duration of the unavoidable delay shall constitute a waiver of any claim on the part of the Company.

**6.0 NOTICES CHANGE OF NOTICE INFORMATION**

**6.1** All notices, documentation and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax or certified United States Mail, return receipt requested, addressed as follows:

To the City:

*Agreement for the Construction of a Wrapper Building  
Adjacent to the Durham Performing Arts Center*

Director of General Services  
Department of General Services  
City of Durham  
101 City Hall Plaza  
Durham, North Carolina 27701  
Fax: 919-560-4986

With a copy to:  
City of Durham  
Durham City Attorney  
101 City Hall Plaza  
Durham, NC 27701  
Fax: (919) 4660

To the Company:

Blackwell Street Management Company  
318 Blackwell Street, Suite 150  
Durham, North Carolina 27701  
Attn: Michael J. Goodmon, Sr.  
Fax: 919-433-4278

With a copy to:

Capitol Broadcasting Company, Incorporated  
2619 Western Boulevard  
Raleigh, North Carolina 27606  
Attn: Jennifer B. Venable, Esq.  
Fax: 919-821-8733

**6.2** A change of address, fax number or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

**7.0 COMPLETION OF PERFORMANCE OBLIGATIONS UNDER THE AGREEMENT**

If Company successfully completes its performance obligations required pursuant to Sections 3.1 and 3.2 of this Agreement, including the completion of Construction of the Wrapper Building, the successful documentation by the Company to the City that the Company has successfully satisfied the Minimum Private Investment requirement, the sale of the Restroom Condominium

to the City, and upon the execution and recordation of the Project Property Conveyances, the President's Club Lease, and the Declaration and Condominium, this Agreement shall be deemed to have been completed and this Agreement shall terminate, except as otherwise expressly provided herein. The ensuing rights and responsibilities of the Parties shall be defined by the various agreements contemplated by this Agreement.

## **8.0 EXHIBITS**

The following exhibits are made a part of this contract:

- Exhibit A "DPAC Amenities Floor Plan," consisting of \_\_\_\_ pages;
- Exhibit B "Restroom Condominium Specs and Finishing List", consisting of \_\_\_\_ pages;
- Exhibit C "President's Club Specs and Finishing List", consisting of \_\_\_\_ pages;
- Exhibit D "Fire Alarm System Specifications for Restroom Condominium and President's Club", consisting of \_\_\_\_ pages;
- Exhibit E "New Dumpster Easement," consisting of \_\_\_\_ pages.
- Exhibit F "Easement for Maintenance of Mechanical Equipment," consisting of \_\_\_\_ pages.
- Exhibit G "One Building Agreement," consisting of \_\_\_\_ pages.
- Exhibit H "Condominium Purchase Contract," consisting of \_\_\_\_ pages.
- Exhibit I "President's Club Lease" consisting of \_\_\_\_ pages.
- Exhibit J "City of Durham Subcontractor Quarterly Record of Payment Report," consisting of 1 page.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

## **9.0 INSURANCE**

The Company shall require that both the Architect and Contractor name the City as an additional insured on the insurance policies required by the Company pursuant to its contracts with the Architect and the Contractor for the Project.

## **10.0 INDEMNIFICATION**

**10.1 Definitions.** In this Section 10.0, the following definitions shall apply:  
"Claims" are claims, losses, damages, liabilities, fines, penalties, fees, royalties, costs, demands, actions, suits, and judgments of any kind or nature whatsoever, whether at law or in equity, including court costs and reasonable attorney's fees assessed as part of any of said items.  
"Persons Connected with Company" are Company's officers, members, managers, board members, employees, agents, contractors, subcontractors of all tiers, and invitees, but excluding the City.

**10.2 Indemnification by Company.** "City Indemnitees" are defined as City, its officers, officials, employees, agents, and independent contractors, but excluding Company. Company shall indemnify, defend, and hold harmless the City Indemnitees from and against all

Claims arising out of, relating to, or resulting from acts or omissions by Company or Persons Connected with Company arising out of, relating to, or resulting from the Company's obligations with respect to this Agreement. Without limiting the preceding sentence, and as an additional obligation of Company, it is agreed that Company shall indemnify, defend, and hold harmless the City Indemnitees from and against all Claims made by independent contractors, including subcontractors of all tiers, where the independent contractor was engaged by Company to perform work pursuant to this Agreement, except to the extent the Claim is the result of a negligent or wrongful act or omission by any of the City Indemnitees. In performing its duties under this Section 10.2, Company shall defend City Indemnitees with legal counsel reasonably acceptable to City.

**9.3 Survival.** This Section 9.0 shall remain in force despite termination of this Agreement with respect to acts and omissions occurring before termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of Company under this Agreement.

## **11.0 MISCELLANEOUS PROVISIONS**

**11.1 SDBE.** The provisions of this Section 11.0 shall apply only to the portion of the Project that is the DPAC Amenities.

### **11.1.1 General Requirements.**

.1 Company shall meet with the Director of the City's Department of Equal Opportunity/Equity Assurance (EO/EA) prior to the Company entering into any contract(s) for Construction of the Project in order to discuss potential contracting opportunities for goods and services for small disadvantaged businesses certified by the City (SDBEs).

.2 The Director may set project specific goals as the Director determines to be generally applicable under Article III of Chapter 18 (as amended from time to time) in City contracting.

.3 In all solicitations for which goal(s) are established, Company will not enter into contracts for goods or services without first soliciting bids from SDBEs and requiring bidders to submit a Participation Plan to meet the goal(s). Bidders must state their SDBE participation in a manner like that required by bidders on contracts to be awarded by the City. If a bidder fails to achieve the goal(s), the bidder must submit documentation to Company of its good faith efforts to achieve the goal(s) within two working days after bid opening. Company shall take all reasonable actions needed to see that bidders comply with this subsection. Company shall make bids and documentation of good faith efforts available to the Director.



.4 Company will notify the Director of EO/EA of upcoming contracting opportunities to ascertain the availability of SDBEs that might be capable of supplying the pertinent goods or services. Each such notice shall be given in a manner and schedule so that the SDBEs will have a reasonable amount of time to respond.

.5 Company will provide quarterly reports using the attached form, “Exhibit J” (CITY OF DURHAM SUBCONTRACTOR QUARTERLY RECORD OF PAYMENT REPORT), on all contracting activity to the Director for reporting to the City Council. The reports are due the last day of April (for January – March), July (for April – June), October (for July – September) and January (for October – December).

.6 Company shall comply with all applicable provisions of Article III of Chapter 18. The failure of Company to comply with Article III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this Agreement and/or other appropriate remedies in accordance with the provisions of that chapter, this Agreement, and State law. The Participation Plan submitted by Company in accordance with that chapter is binding on Company.

.7 Section 18-59(f) of Chapter 18 provides, in part, “If the City Manager determines that [Company] has failed to comply with the provisions of [this Agreement], the City Manager shall notify [Company] in writing of the deficiencies. [Company] shall have 14 days, or such time as specified in [this Agreement], to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to [Company’s] alleged violations of its obligations under Article III of Chapter 18 and not to [Company’s] alleged violations of other obligations.

**11.1.2 Remedies.** The Parties recognize that the City considers the obligations of Company under subsection 11.1.1 above to (1) further an important policy of the City for the benefit of the public; (2) be material to this Agreement, and (3) be part of the reason that the City is willing to enter into this Agreement. The Parties recognize that the City will suffer financial loss if Company does not comply with its obligations under subsection 11.1.1. The Parties recognize that the City could terminate this Agreement if Company materially breaches its obligations under subsection 11.1.1 after notice from the City describing the nature of the breach and the Company’s failure to cure said breach within a reasonable period of time, not to exceed 30-days of notice, and that such a termination would result in monetary losses to the City. The Parties also recognize the delays, expense, and difficulty to both Parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that Company shall be liable for and shall pay the City the amount specified herein as liquidated damages, and not as a penalty. The amounts stated as liquidated damages are agreed to be reasonable estimates of the City’s losses and expenses for delays, including

administrative costs. The City may collect liquidated damages by retaining moneys otherwise due Company in the amount of such damages, and by other legal means. Nothing in this Section 11.5.2 shall reduce the City's rights under other provisions of this Agreement, any applicable statutes or ordinances, or any applicable principle of law. In its discretion, the City may waive some or all liquidated damages against Company. Such a waiver is valid only if done by a signed writing that refers specifically to this Section 11.5.2 and specifically mentions "liquidated damages." If the City seeks an injunction to require compliance with any portion of Section 11.1.1, Company hereby agrees to waive any contention that the injury from the noncompliance would not be irreparable or that the City has an adequate remedy at law.

The damages shall be as follows:

For Company's failure to comply with Section 11.1.1(1): \$200 for the first two weeks of noncompliance; \$300 for the second two weeks of noncompliance; and \$200 for each subsequent week.

For Company's failure to comply with Section 11.1.1(3), except for failure to make bids and documentation of good faith efforts available to the Director : One percent of the amount of the payments made by Company under each contract entered into in violation of Section 10.1.1(3), unless the goals were met or good faith efforts were made with respect to that contract.

For failure to make bids and documentation of good faith efforts available to the Director as required by Section 11.1.1(3): \$100 for the first week of noncompliance; \$200 for the second week; and \$300 for each subsequent week.

For noncompliance with Section 11.1.1(4): One percent of the amount of the payments made by Company under each contract entered into in violation of Section 11.1.1(4), unless the goals were met or good faith efforts were made with respect to that contract.

For noncompliance with Section 11.1.1(5): \$200 for the first two weeks of noncompliance; \$300 for the second two weeks of noncompliance; and \$200 for each subsequent week.

**11.1.3 Definitions.** In this document, words, including "SDBE" and the "Director" shall have the meaning assigned in Article III of Chapter 18, unless the context requires otherwise. "Article III of Chapter 18" means Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance).).

**11.2 EEO Provisions.** Company agrees as follows: (1) The Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Company shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the

following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Company shall state, in all solicitations or advertisement for employees placed by or on behalf of the Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Company shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Company's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the Company ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Company shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

**11.3 City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

**11.4 Choice of Law and Forum.** This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

**11.5 Principles of Interpretation and Definitions.** In this Agreement, unless the context requires otherwise (a) the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation; (b) references to a "Section" or "section" shall mean a section of this Agreement; (c) "Contract" and "Agreement," whether or not capitalized, refer to this instrument; (d) titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement; (e) "Duties" includes obligations; (f) the word "person" includes natural persona, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities; (g) the word "shall" is mandatory; and (h) the word "day" means calendar day.

**11.6 Waiver.** No action or failure to act by either party hereto shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to

act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**11.7 Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing legislative, governmental, or other powers or functions.

**11.8 Severability.** If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

**11.9 Assignment; Successors and Assigns.** The Company shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Agreement and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Company's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Company the right to assign, it is agreed that the duties of the Company that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

**11.10 E-Verify Compliance.** The Company represents and covenants that the Company and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

**11.11 Compliance with Law.** In performing all of its obligations under this Agreement, the Company shall comply with all applicable laws and ordinances.

**11.12 No Third Party Rights Created.** This Agreement is intended for the benefit of the City and the Company and not any other person.

**11.13 Modifications; Entire Contract.** A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a Deputy or Assistant City Manager signs it for the City. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, contracts, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

897       **11.14 City's Manager's Authority.** To the extent, if any, the City has the power to  
898 exercise the City's rights and remedies under this Agreement that power may be exercised by the  
899 City Manager or a Deputy or Assistant City Manager without City Council action.  
900

901       **11.15 Approval Procedure between the Parties.** When a party hereto is herein given  
902 the right to consent to or approve any document, plan, specification, proposed action or work in  
903 accordance with the provisions of this Agreement, the following procedures shall be followed:  
904

- 905       .1 Such document or a written description of the proposed action or work  
906 requiring consent or approval shall be submitted by the party having  
907 responsibility therefor (the "Requesting Party") in accordance with the notice  
908 requirements of Section 6.0, to the party having the right of consent or approval.  
909
- 910       .2 Within 10 calendar days after the receipt of any written notice requesting  
911 consent or approval, the party having the right of consent or approval shall notify  
912 the Requesting Party in writing of its consent or approval or of its specific  
913 objections to the documents, proposed action or work.  
914
- 915       .3 Failure to respond with the specific objections within the maximum time  
916 period specified herein shall constitute the written consent or approval of the  
917 matters contained in the notice requiring approval or consent.  
918
- 919       .4 In order to avoid any delay in the design and completion of the Project, it is  
920 the intention of the parties that all changes or other matters affecting the schedule  
921 and budget for the Project shall be reviewed, approved and handled in the most  
922 expeditious manner possible.  
923
- 924       .5 Except in situations where it is stipulated that approval or consent may be  
925 granted or withheld in the sole discretion of the party from whom approval or  
926 consent is requested, such approval and consent shall not be unreasonably  
927 withheld, conditioned or delayed.  
928

929       IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be  
930 executed under seal themselves or by their respective duly authorized agents or officers.  
931

932  
933  
934       *[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*  
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936

*Agreement for the Construction of a Wrapper Building  
Adjacent to the Durham Performing Arts Center*

**CITY OF DURHAM**

ATTEST:

By: \_\_\_\_\_

Preaudit Certification:

**BLACKWELL STREET MANAGEMENT COMPANY, LLC**

By: \_\_\_\_\_ (SEAL)  
Manager

State of \_\_\_\_\_

ACKNOWLEDGMENT BY  
BLACKWELL STREET MANAGEMENT  
COMPANY, LLC

County of \_\_\_\_\_

I, a notary public in and for said county and state, certify that  
\_\_\_\_\_ personally (1) appeared before me this day, (2)  
stated that he or she is a manager of **BLACKWELL STREET MANAGEMENT COMPANY,  
LLC**, a limited liability company organized and existing under the laws of the State of North  
Carolina, (3) acknowledged that the foregoing contract or agreement with the City of Durham  
carries on the company's business in the usual way, and (4) acknowledged the due execution,  
under seal, of the contract on behalf of the company. This the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public